2016 IL App (2d) 151273-U
No. 2-15-1273
Order filed September 28, 2016
Modified Upon Denial of Rehearing December 1, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

BAC HOME LOAN SERVICING, L.P., f/k/a Countrywide Home Loan Servicing, L.P.,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff,	)	
v.	)	No. 11-CH-1358
DAVID GUTE, a/k/a David M. Gute, UNKNOWN OWNERS, and NONRECORD CLAIMANTS,	)	
Defendants	)	
(David Gute, a/k/a David M. Gute, Defendant-Appellant; Bank of America N.A., Substituted Plaintiff-Appellee).	)	Honorable Suzanne C. Mangiamele, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied defendant's section 2-1401 petition to vacate a judgment as void: despite defendant's myriad claims of error, the court had jurisdiction of the foreclosure action and thus its judgment was not void.

¶ 2 David Gute, the defendant property owner in a foreclosure action, appeals from the denial of his petition for relief from the judgment, a petition in which he challenged the foreclosure and

the confirmation of the judicial sale. On appeal, Gute asserts that the trial court lacked jurisdiction to enter the judgment because the original plaintiff, BAC Home Loan Servicing, L.P., f/k/a Countrywide Home Loan Servicing, L.P. (BAC), and the substituted plaintiff, Bank of America N.A. (Bank of America), lacked standing. We affirm the dismissal, holding that none of the defects that Gute alleged could deprive the court of jurisdiction.

¶ 3 I. BACKGROUND

¶ 4 On June 6, 2011, BAC filed a foreclosure complaint relating to the property at 4817 Glenbrook Trail in McHenry. Gute was the sole named defendant; BAC alleged that he was in default. The complaint, consistent with the mortgage documents, stated that the "mortgagee, trustee or grantee in the Mortgage" was Countrywide Home Loans, Inc. BAC also alleged that the capacity in which it brought the action was "mortgagee and holder of note." The attached note showed no endorsements and the exhibits did not include any assignment of the note.

¶ 5 BAC filed an affidavit of personal service on Gute. Gute then filed a large collection of documents displaying obvious kinship to the products of "Sovereign Citizens" or similar movements. BAC moved for summary or default judgment. Gute then filed a conventional appearance, and the court gave him leave to respond.

¶ 6 BAC filed an affidavit to prove up an amount due on the note of $124,958.95. The mortgage documents, which included the note, were appended to this filing. Among the documents was an assignment of the mortgage from Countrywide Home Loans, Inc., to BAC.

¶ 7 BAC next moved for the substitution of plaintiffs, alleging that it had been merged into Bank of America, which should now be the plaintiff. The court granted the motion.

¶ 8 The court then entered a judgment of foreclosure in favor of Bank of America. The judicial sale took place on August 9, 2012, and Bank of America, with a bid of $4,182.55 less

than the judgment indebtedness, was the winning bidder. The court confirmed the sale on April 18, 2013.

¶ 9 On July 8, 2013, Gute filed what amounted to a motion to stay the eviction. This again was grounded in unconventional legal theories under which he asserted that he had paid off the mortgage and that the eviction was thus fraudulent. The court "struck" the filing, ruling that it lacked jurisdiction to take the action that Gute sought.

¶ 10 On July 23, 2015, Gute filed a petition to vacate the judgment in which he cited section 2-1401 of Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)); this had more resemblance to a standard legal filing that did Gute's earlier filings. In it, Gute asserted that the court's earlier judgments were void for lack of subject-matter jurisdiction. He did not explicitly state his basis for concluding that there was no jurisdiction, but did attach a copy of *LVNV Funding, LLC v. Trice*, 2011 IL App (1st) 092773 (*Trice I*), which held that a judgment entered on a complaint filed by an unregistered collection agency is void. We note that, when Gute filed his petition, *Trice I* had shortly before been abrogated by the supreme court in a later appeal in the same matter. That case, *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶¶ 39-40 (*Trice II*) held that the collection agency's lack of Illinois licensure did not deprive the trial court of jurisdiction to enter judgment.

¶ 11 Bank of America filed a response, which (as amended) asserted that Gute's petition was untimely and, further, that petitions for relief from judgment filed after the confirmation of the sale are barred by section 15-1509(c) of the Code (735 ILCS 5/15-1509(c) (West 2012)). It further argued that the petition was meritless. Gute filed a reply in which he clarified that his claim was that the court lacked jurisdiction because the plaintiffs lacked standing. The court

denied Gute's petition on November 30, 2015, and Gute filed a notice of appeal on December 28, 2015.

¶ 12 II. ANALYSIS

¶ 13 As background to describing the parties' arguments on appeal, we note that Illinois law "recognizes at least three primary types of section 2-1401 petitions" (*Aurora Loan Services, LLC v. Pajor*, 2012 IL App (2d) 110899, ¶ 15), only the first two of which are relevant here. The first, classic type of petition is that based on "new facts"—a petition that pleads the existence of facts unknown to the trial court at the time of judgment, which, if known to the court, would have prevented the entry of that judgment. Such petitions are exemplified by *Smith v. Airoom, Inc.*, 114 Ill. 2d 209 (1986), and are derived from petitions for writs of *coram nobis*. *Pajor*, 2012 IL App (2d) 110899, ¶¶ 15-16. The second type is the petition to vacate a judgment as void, as authorized in *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95 (2002). The *Sarkissian* court recognized that, although it is well settled that an order entered by a court lacking jurisdiction is void and can be attacked at any time, the *label* for the proper vehicle of attack had been the subject of controversy. (The uncertainty was due to the phrasing of section 2-1401(f) (735 ILCS 5/2-1401(f) (West 2014)), which states that "[n]othing contained in this Section affects any existing right to relief from a void order or judgment, or to employ any existing method to procure that relief." See *Sarkissian*, 201 Ill. 2d at 104. The court held that a petition to vacate a judgment as void *is* a petition under section 2-1401(f) *by virtue of* challenging a judgment as void and that "the allegation that the judgment or order is void substitutes for and negates the need to allege a meritorious defense and due diligence." *Sarkissian*, 201 Ill. 2d at 104.

¶ 14 With that, we can return to the specifics of this case. On appeal, Gute asserts that the trial court lacked "jurisdiction of the subject matter." He argues that his petition was thus one under section 2-1401(f). He further argues that jurisdiction was lacking for three reasons. One, he asserts that standing—or at least some aspects thereof—are jurisdictional and that the plaintiffs lacked such standing for two reasons: (a) the assignment of the note to BAC was untimely, and (b) no case or controversy existed because he tendered and BAC accepted "an instrument to setoff, settle, and close the account." Two, he argues that Bank of America is not properly registered in Illinois and thus is not an entity that can properly file an Illinois foreclosure case. Three, he argues that procedural errors in the handling of the change of plaintiffs and of a change of counsel meant that no plaintiff had properly appeared.

¶ 15 Bank of America, responding, states that Gute never specified the type of section 2-1401 petition that he was filing. It then argues that Gute's petition failed to satisfy the standards for a new-facts-type section 2-1401 petition, and that, in any event, it was barred by section 15-1509(c).

¶ 16 We hold that the court did not err in dismissing Gute's petition. Although we agree with Gute that his petition was based on a claim that the court lacked jurisdiction, thus bringing the claim within section 2-1401(f) and obviating the requirements to allege due diligence and a meritorious defense, we conclude that nothing Gute raises suggests that the court lacked jurisdiction to enter the foreclosure judgment or approve the sale. Had Gute's claims been based on the merits of the judgment, and not on a lack of jurisdiction, we would have agreed with Bank of America that they would be barred by section 15-1509(c). However, as we discuss, section 15-1509(c) cannot create jurisdiction where none exists, and thus cannot be a defense to voidness claims. When, as here, a section 2-1401 petition raises a purely legal basis for relief from

judgment, such as a claim that the judgment is void for reasons apparent from the record, review of the petition's disposition is *de novo*. *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶¶ 45-49; see also *People v. Vincent*, 226 Ill. 2d 1, 14 (2007).

¶ 17 The relevant legal principles here are Illinois's principles of voidness and jurisdiction. We emphasize here that only *Illinois's* standards are relevant. As we explained in *People v. Hubbard*, 2012 IL App (2d) 101158, ¶¶ 21-27, Illinois *does not* follow the federal approach to voidness and jurisdiction—state approaches need not mirror the federal approach and the states may take divergent approaches to providing due process. In Illinois, ever since a 1964 amendment to the judiciary article of our previous constitution first gave circuit courts "original jurisdiction of all justiciable matters" (Ill. Const. 1870, art. VI (amended 1964), § 9; Ill. Const. 1970, art. VI, § 9), only subject-matter and personal jurisdiction have been necessary for a court to have full jurisdiction to enter a judgment. *Trice II*, 2015 IL 116129, ¶¶ 27-38. The legislature retains the power to limit circuit court jurisdiction only for judicial review of administrative actions. *Trice II*, 2015 IL 116129, ¶¶ 34-35.

¶ 18 To be sure, it took Illinois courts decades to recognize the full extent of the change effected by the 1964 amendment. The supreme court's 2001 decision in *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514 (2001), was the first to reject the longstanding idea that the law could create conditions for the courts' exercise of jurisdiction as inconsistent with the current constitution's grant of jurisdiction. In particular, it rejected any jurisdictional requirement that the court have " 'inherent authority' " to enter a particular judgment. *Steinbrecher*, 197 Ill. 2d at 529. Ever since that decision, the supreme court has consistently moved toward a view of subject-matter jurisdiction that accepts ever fewer limits. *Steinbrecher* was quickly followed by *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325 (2002), the case whose

name has come to stand for the rule that the circuit court's jurisdiction is set by the constitution's grant of jurisdiction over all justiciable matters (*Belleville Toyota*, 199 Ill. 2d at 336). A series of cases in the following years built upon that freshly stated rule. In 2010, in *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 251-54 (2010), it held that standing and ripeness (although jurisdictional in the federal courts) have no such role in Illinois courts, and that, accordingly, lack of standing is merely an affirmative defense that a party can forfeit if it does not timely raise it. In 2012, the supreme court rejected a longstanding rule that a party's representation by a person who is not a lawyer deprives the court of subject-matter jurisdiction to act on that person's filings. *Downtown Disposal Services, Inc. v. City of Chicago*, 2012 IL 112040, ¶¶ 25-29. Last November, in *People v. Castleberry*, 2015 IL 116916, ¶¶ 11-17, the supreme court removed the last obvious vestige of the old jurisdictional structure when it held that a court has jurisdiction to impose a sentence that is unauthorized under the statutory sentencing scheme. In sum, the supreme court since 2001 has consistently been ridding Illinois law of jurisdictional doctrines that were holdovers from the pre-1964 constitutional regime.

¶ 19 With this background, it should be clear that none of Gute's claims is effective as a challenge to the subject-matter jurisdiction of the circuit court. However, we briefly consider each of Gute's specific claims.

¶ 20 Gute first asserts that the original and substituted plaintiffs—BAC and Bank of America—lacked standing to sue. As we noted, the supreme court in *Lebron* held that a lack of standing has no jurisdictional effect. He further asserts that the foreclosure claim failed to meet the "case or controversy" requirement. Illinois has no such requirement. The closest Illinois has to such a requirement is the limitation of jurisdiction to justiciable matters, which are matters that "fall[] within the general class of cases that the court has the inherent power to hear and

determine." *In re Luis R.*, 239 Ill. 2d 295, 301 (2010). This court has recognized that foreclosure cases are a general class of cases that the circuit courts have the inherent power to determine and thus present justiciable matters. *Nationstar Mortgage, LLC v. Canale*, 2014 IL App (2d) 130676, ¶ 18. Gute further argues that " 'injury in fact' is a key requirement in establishing a controversy or conflict," which he implies is necessary for a court to have subject-matter jurisdiction. Gute seems to be attempting to import the injury-in-fact requirement and the case-or-controversy requirement of article III of the United States Constitution (U.S. Const. art. 3, § 2) into Illinois law. We have already discussed Illinois's justiciability requirement for subject-matter jurisdiction. As that discussion shows, the justiciability requirement does not incorporate those article III concepts.

¶ 21 Second, Gute argues that Bank of America was not properly registered in Illinois and that that status deprived the court of the power to hear the case. Gute is incorrect. Gute's argument parallels that in the appellate court decision in *Trice I*. However, the supreme court, in *Trice II*, firmly rejected the appellate court's reasoning. In that later decision, the supreme court reaffirmed the principle that a judgment is void only when it is entered by a court without jurisdiction, and that, "[i]n a civil lawsuit that does not involve an administrative tribunal or administrative review, jurisdiction consists solely of subject matter or personal jurisdiction." *Trice II*, 2015 IL 116129, ¶ 39. Further, it restated the rule that "[s]ubject matter jurisdiction is defined solely as the power of a court to hear and determine cases of the general class to which the proceeding in question belongs"; the court explicitly refused to recognize any third type of jurisdiction. *Trice II*, 2015 IL 116129, ¶ 39. Thus, the plaintiff's licensure status was entirely irrelevant to the court's jurisdiction. The rule in *Trice II* applies here. Any failure by Bank of

America to comply with an Illinois registration requirement would have no effect on the court's jurisdiction.

¶ 22 Third, Gute argues that procedural errors in the handling of the change of plaintiffs and of a change of counsel meant that no plaintiff had properly appeared. Gute is incorrect on this final point as well.

¶ 23 Gute bases this third claim on an idea that jurisdiction has three elements. He draws that third element from a concept in Kentucky law: citing *Milby v. Wright*, 952 S.W.2d 202, 205 (Ky. 1997), he argues for the existence of "jurisdiction over the *particular* case at issue," a concept "which refers to the authority and power of the court to decide a *specific* case, rather than the class of cases over which the court has subject-matter jurisdiction." (Emphases in original.) According to the *Milby* court, the need for a timely notice of appeal for jurisdiction to vest in an appellate court is an example of this third kind of jurisdiction. *Milby*, 952 S.W.2d at 205. A non-Illinois decision such as *Milby* is, of course, never binding as to Illinois law. Such a decision nevertheless may be persuasive, but we generally do not resort to considering such sources of law when relevant Illinois law exists. *K&K Iron Works, Inc. v. Marc Realty, LLC*, 2014 IL App (1st) 133688, ¶ 47. As we have discussed, copious Illinois law exists. Thus, although the concept in *Milby* might be an interesting alternative way to look at certain technical jurisdictional requirements, it cannot change how we decide a case.

¶ 24 Instead, we here look to *Downtown Disposal Services*, 2012 IL 112040, ¶¶ 25-29, in which the supreme court rejected as antiquated the idea that improper conduct by a party—representation by a nonattorney in the case at issue—could divest the court of jurisdiction. The same principle applies here. We do not have to consider what the parties did or did not do wrong because nothing could produce a void decision.

¶ 25 III. CONCLUSION

¶ 26 Because Gute has failed to set out any basis on which we could conclude that the judgment at issue was void, we affirm the denial of that petition.

¶ 27 Affirmed.